

Message Text

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ORIGIN EB-07

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TO AMEMBASSY LISBON
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SUBJECT: PROPOSED POOLING ARRANGEMENT FOR MERCHANT FLEET

REF: LISBON 8368

1. THE DEPARTMENT OF STATE, AS A GENERAL RULE, FAVORS
MAXIMUM COMPETITION FOR COMMERCIAL CARGOES, AND IS CONCERNED
BY THE POSSIBLE ANTI-COMPETITIVE EFFECT OF POOLING AGREE-
MENTS ON RATES AND SERVICES TO SHIPPERS. NEVERTHELESS,
UNDER SOME CIRCUMSTANCES, U.S. LAW PERMITS POOLING ARRANGE-
MENTS AMONG SHIPPING LINES, PROVIDED THE POOL IS REVIEWED
AND APPROVED BY THE FEDERAL MARITIME COMMISSION.

2. THE DEPARTMENT VIEWS POOLING AGREEMENTS IN TWO CONTEXTS:
FIRST, AGREEMENTS BETWEEN U.S.-FLAG CARRIERS AND FOREIGN
CARRIERS WHOSE GOVERNMENTS HAVE ADOPTED EXTENSIVE CARGO
RESERVATION MEASURES; SECOND, AGREEMENTS BETWEEN LIKE
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PARTIES WHEN GOVERNMENTAL CARGO RESERVATION MEASURES ARE

NOT A SIGNIFICANT FACTOR.

3. IN BOTH CONTEXTS, IT IS THE DEPARTMENT'S GENERAL VIEW THAT CARGO SHARING (POOLING) AGREEMENTS SHOULD BE AVOIDED. THIS CONCLUSION IS BASED ON THE PREMISE THAT COMPETITION AMONG SHIPPING LINES BENEFITS TRADING INTERESTS, AND THAT CARGO-SHARING SCHEMES ARE, IN THE LONG RUN, DETRIMENTAL TO THOSE PROTECTED. IN ADDITION, THE DEPARTMENT SEES GREAT VALUE IN COMMERCIAL NEGOTIATIONS AS THE BASIS FOR ARRANGEMENTS BETWEEN SHIPPERS AND CARRIERS.

4. WE RECOGNIZE THAT MANY COUNTRIES DO NOT SHARE THESE VIEWS, AND THAT CARRIERS SUBJECT TO FMC JURISDICTION OPERATE IN THE ORLD AS IT IS, NOT AS WE MIGHT LIKE IT TO BE. MANY COUNTRIES HAVE IMPLEMENTED OR ARE LIKELY TO IMPLEMENT SOME TYPE OF RESTRICTIVE OR PROTECTIONIST MEASURES INTENDED TO PROMOTE THEIR OWN MERCHANT FLEETS. SUCH MEASURES CREATE OBVIOUS PRESSURES BY U.S.-FLAG CARRIERS TO ENTER INTO CARGO SHARING AGREEMENTS IN ORDER TO PARTICIPATE IN THESE TRADES.

5. FURTHER, EVEN IN CASES WHERE THERE IS NOT EXTENSIVE NATIONAL CARGO PREFERENCE LEGISLATION, POOLS MAY AFFORD BENEFITS WHICH RENDER THEM IN THE PUBLIC INTEREST, NOTWITHSTANDING THEIR ANTI-COMPETITIVE EFFECTS. U.S. LEGISLATION CONTEMPLATES THIS POSSIBILITY, AND ESTABLISHED THE FEDERAL MARITIME COMMISSION AS A MEANS TO ASSURE THAT POOLING ARRANGEMENTS TRULY SERVE THE BROADER PUBLIC INTEREST.

6. HOWEVER, IN BOTH CONTEXTS THE QUESTION WHETHER PARTICULAR CARGO POOLING ARRANGEMENTS LEAD TO BENEFITS WHICH MAKE THEM IN THE PUBLIC INTEREST, EVEN THOUGH THEY MAY HAVE ANTI-COMPETITIVE EFFECTS, MUST BE DETERMINED ON A CASE-BY-CASE BASIS BY THE FMC UNDER SECTION 15 OF THE SHIPPING ACT OF 1916. EACH AGREEMENT MUST BE CONSIDERED IN LIGHT OF ALL OF THE CONSIDERATIONS WHICH THE LAW REQUIRES THE FMC TO TAKE INTO ACCOUNT, INCLUDING THE EFFECTS OF THE AGREEMENT ON COMPETITION AND ON THE PUBLIC INTEREST GENERALLY. WE RECOGNIZE THAT SUCH LIMITED OFFICIAL USE

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JUDGMENTS INVOLVE A VARIETY OF FACTORS, HIGH IN IMPORTANCE BEING THAT OF FOREIGN RELATIONS.

7. PARTICULAR REFERENCE TO PORTUGAL-U.S. TRADE WILL BE THE SUBJECT OF A MEETING BETWEEN DEPARTMENT OFFICIALS (EB/TCA/MA) AND AEL VICE PRESIDENT BALLIN ON DECEMBER 17. DEPARTMENT WILL APPRISE POST OF OUTCOME. ROBINSON

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